

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Theatrical Stage Employees Union, Local 2, IATSE and Event Media, Inc., d/b/a Complete Crewing, Inc. and United Steelworkers, AFL-CIO-CLC, Local 17—Decorators.** Case 13-CD-185979

July 9, 2018

**DECISION AND ORDER QUASHING NOTICE OF HEARING**

BY MEMBERS PEARCE, MCFERRAN, AND EMANUEL

The charge in this Section 10(k) proceeding was filed on October 11, 2016, by Event Media, Inc. d/b/a Complete Crewing, Inc. (Complete Crewing or the Employer), alleging that Theatrical Stage Employees Local 2, IATSE, AFL-CIO (Stagehands) violated Section 8(b)(4)(D) of the Act by threatening to engage in proscribed activity with an object of forcing the Employer to assign certain work to employees represented by Stagehands rather than to employees represented by United Steelworkers, AFL-CIO-CLC, Local 17 (Decorators). A hearing was held on November 4, 2016, before Hearing Officer Andrew Hampton. Thereafter, Stagehands, Decorators, and the Employer filed posthearing briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, an Illinois corporation, is engaged in the business of providing production crews and/or staffing at venues such as hotels and convention centers. During the 12-month period prior to November 4, 2016, the Employer performed services valued in excess of \$50,000 in states other than the State of Illinois. The parties have stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The parties also stipulated, and we find, that Stagehands and Decorators are both labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

*A. Background and Facts of the Dispute*

The Employer provides skilled production labor for business meetings and events, mostly at hotels and convention centers in the Chicago, Illinois area. Production labor typically requires setting up or breaking down a stage, screen, or speaker area. The parties stipulated that

the work in dispute is “the installation and dismantling of drapery and other soft goods in the production environment; including the installation and dismantling of pipe and drape at staged events or performances at hotels.”

Since at least 2006, the Employer has had separate collective-bargaining agreements with Stagehands and Decorators; both unions' agreements cover the disputed work. The Employer's president, Floyd Dillman, testified that Stagehands' relationship with the Employer predated its 2006 contract. Dillman further testified that he had attempted to resolve the jurisdictional conflict between Decorators and Stagehands while negotiating the 2010 agreement with Stagehands by proposing the deletion of conflicting language and the addition of a side agreement clarifying that the conflicting language would not apply to Stagehands. Stagehands did not agree, and Dillman did not make any further attempt to alter Stagehands' jurisdiction, either at that time or in the 2014 agreement.

From 2006 to 2016, the Employer assigned employees represented by both unions to the disputed work. Although the two unions were sometimes on the same worksite, they did not perform the disputed work together. At some of the major production venues in Chicago, including McCormick Place, Navy Pier, the Chicago Hilton, and the Palmer House, the Employer was contractually required to hire employees represented by a specific union. Dillman testified that for the remaining assignments, where he had discretion to choose one of the two unions (hereafter “discretionary” work), his preference was to assign the production work to Stagehands, with one consistent exception: where Decorators was already on site performing work for an exposition, Dillman testified that he would use Decorators to perform production work.<sup>1</sup>

Beginning in June 2016, the Employer started to assign discretionary work it had traditionally given to Decorators to Stagehands. On the first occasion, after three employees represented by Decorators performed production work at the Chicago Sheraton, the Employer sent them home rather than assign them discretionary dismantling work, per the established practice. When doing so, the Employer informed Decorators that the Stagehands would perform the dismantling work. In response, Decorators filed a grievance, and the Employer opted to pay the Decorators-represented employees for the dismantling work rather than contest the grievance. On the sec-

<sup>1</sup> In their briefs, the parties indicate that the disputed work is limited to discretionary production work, but the stipulation does not include this limitation. Further, Dillman testified that if the Board rules in favor of Stagehands, the Employer will disregard the venue's rules and give the Palmer House work to employees represented by Stagehands.

ond occasion, the Employer assigned production work to Stagehands at the Chicago Hyatt. Finally, the Employer assigned production work to the Stagehands at the Palmer House, even though this was a venue that required the Employer to hire Decorators for production work. Decorators filed grievances in each case, claiming that the Employer failed to properly assign it production work. Deciding it was too expensive to continue to pay both Stagehands and Decorators any time a grievance was filed, the Employer told Stagehands that it would use Decorators for all further discretionary work involving drapery in hotels.<sup>2</sup> This prompted an October 11, 2016 letter from Stagehands to the Employer threatening to strike and/or picket if the Employer “reassigns any of the work currently being performed by employees represented by Local 2 (Stagehands) to employees represented by USW Local 17(U)(Decorators).” Thereafter, the Employer assigned all of its production work to Stagehands-represented employees.

The Employer then filed an unfair labor practice charge, alleging that Stagehands violated Section 8(b)(4)(D) of the Act through its October 11, 2016 letter.

#### B. Work in Dispute

The parties stipulate, and we find, that the work in dispute is the installation and dismantling of drapery and other soft goods in the production environment; including the installation and dismantling of pipe and drapery at stage events or performances at hotels in the Chicago area.

#### C. Contentions of the Parties

Stagehands and the Employer assert that there is reasonable cause to believe that Stagehands violated Section 8(b)(4)(D), and therefore that the Board is required to make an award of the disputed work under Section 10(k) of the Act. The Employer and Stagehands further assert that there is no agreed-upon method for voluntary adjustment of the dispute in question that would bind all parties. On the merits, the Employer and Stagehands argue that the work in dispute should be awarded to the employees represented by Stagehands.

Decorators argues that the proceeding should be quashed because its grievances were intended to preserve work, an action that is not a proper basis for a 10(k) proceeding. However, if the Board reaches the merits, Decorators argues that the traditional factors considered in

<sup>2</sup> Although Dillman testified that, in response to Decorators’ grievances, he told Stagehands he did not want the hassle, and would start giving *the work to Decorators again*, that is not what he communicated to Stagehands. He instead informed Stagehands that he would give Decorators *all* the discretionary work, not merely what Decorators claimed or had performed.

10(k) proceedings weigh in favor of awarding the work to employees it represents.

#### D. Applicability of the Statute

Before the Board may proceed to a determination of dispute under Section 10(k) of the Act, the Board must find that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. *Operating Engineers Local 150 (R&D Thiel)*, 345 NLRB 1137, 1139 (2005). This standard requires finding that there is reasonable cause to believe that there are competing claims to the disputed work and that a party has used proscribed means to enforce its claim to the work in dispute.<sup>3</sup> See *id.* We are not satisfied that those requirements have been met in this case.

At first glance, this dispute might appear to be a jurisdictional dispute: there are competing claims for production work, and one of the parties threatened to strike if the Employer assigned work to the other party. In determining whether a genuine jurisdictional dispute exists, however, the Board must examine the “real nature and origin of the dispute.” See *Teamsters Local 578 (USCP-Wesco)*, 280 NLRB 818, 820 (1986), *affd.* sub nom. *USCP-Wesco, Inc. v. NLRB*, 827 F.2d 581 (9th Cir. 1987). If the dispute is “fundamentally over the preservation, for one group of employees, of work they have historically performed, it is not a jurisdictional dispute.” *Machinists District 190 (SSA Terminal)*, 344 NLRB 1018, 1020 (2005), *affd.* 253 Fed.Appx. 625 (9th Cir. 2007) (unpublished decision). Similarly, if the dispute is of the Employer’s own making, the Board will not resolve it in a 10(k) proceeding. See, e.g., *Teamsters Local 107 (Safeway Stores)*, 134 NLRB 1320, 1322–1323 (1961). We find that both circumstances are present here.

First, we find that the nature of the dispute is work preservation. Both Decorators’ and Stagehands’ contracts with the Employer encompass the work in dispute at Chicago-area venues. From 2006 to 2016, the Employer accommodated the Unions’ overlapping contractual provisions—apparently to the Unions’ satisfaction - by assigning most of its production work to Stagehands, with two exceptions: where the venue was one where the Employer was contractually required to assign the work to Decorators, and discretionary work where Decorators was already on site performing exposition work. Beginning in 2016, however, the Employer altered this established practice—citing efficiency and cost considera-

<sup>3</sup> Additionally, there must be a finding that the parties have not agreed on a method for the voluntary adjustment of the dispute. See *Operating Engineers Local 150 (R&D Thiel)*, 345 NLRB 1137, 1139 (2005). That requirement is not at issue here, as no party contends that there is a voluntary method of adjustment.

tions—and began assigning work to Stagehands that it had consistently given to Decorators. In response, Decorators filed grievances under its collective-bargaining agreement. Significantly, the Employer does not dispute that Decorators’ grievances claim work-preservation, or contend that Decorators’ grievances sought work beyond what the Employer historically had assigned it. In response to these grievances, the Employer notified Stagehands that it would assign *all* of its discretionary work to Decorators (including work Decorators never sought), Stagehands, in turn, threatened to strike if the Employer “reassign[ed]” traditional Stagehands work to Decorators. In sum, although both unions performed production work for the Employer, prior to the Employer’s 2016 reassignment of work, there was an established practice of Stagehands and Decorators performing clearly delineated work, which each union was attempting to preserve.

Second, to the extent there was a dispute over work, we find that it was a product of the Employer’s own making when it reassigned Decorators’ discretionary work to Stagehands. As the Board stated in *Safeway Stores*, “[c]ertainly it was not intended that every time an employer elected to reallocate work among his employees or supplant one group of employees with another, a ‘jurisdictional dispute’ exists within the meaning of [10(k)].” 134 NLRB at 1322. In *Safeway*, the Board found no jurisdictional dispute where the employer reassigned work previously performed by one union’s members to employees represented by another union. The reassignment directly violated longstanding past practice and the collective-bargaining agreement between the former union and the employer. In quashing the notice of hearing, the Board emphasized that 10(k) proceedings are intended to settle disputes between rival groups of employees, not to permit an employer to foment a dispute by transferring the work away from the group claiming it. *Id.* at 1323. See also *Seafarers (Recon Refractory & Construction)*, 339 NLRB 825 (2003) (Board quashed 10(k) proceeding where work performed for a decade by one group of employees was suddenly shifted by employer to another group.), review denied 424 F.3d 980 (9th Cir. 2005).<sup>4</sup> Here too, we find that the dispute was precipitated by the Employer’s decision to reassign work from Decorators to Stagehands.

<sup>4</sup> Thus, Sec. 10(k) was intended “to protect employers from being ‘the helpless victims of quarrels that do not concern them at all.’” *NLRB v. Radio & Television Broadcast Engineers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573, 580–581 (1961). It was not intended to address controversies of the employer’s own making. Otherwise, “an employer could always create a jurisdictional dispute between employee groups [simply] by reassigning work.” *Longshore & Warehouse Union Local 62-B v. NLRB*, 781 F.2d 919, 925 (D.C. Cir. 1986).

Stagehands argues that a jurisdictional dispute exists because the production work is covered by both Unions’ collective-bargaining agreements and was traditionally shared between the two Unions. Thus, Stagehands asserts that any attempt by Decorators to secure exclusive rights to production work is an attempt to acquire work, bringing the dispute within the jurisdiction of Section 10(k). If Decorators *had* attempted to secure all production work assigned by the Employer, then Stagehands would be correct. See, e.g., *Laborers Local 265 (Henkels & McCoy, Inc.)*, 360 NLRB 819, 822 (2014) (where two unions had previously shared jurisdiction of work and one union claims sole jurisdiction, such a claim is not “work preservation,” but “work acquisition”); *Carpenters (Prate Installations, Inc.)*, 341 NLRB 543, 545 (2004) (finding work acquisition where “Carpenters claimed *all* of the disputed work, including that previously performed by employees represented by the Roofers.”) (emphasis in original). Here, however, Decorators did not file grievances to secure exclusive rights to all production work or historically shared work. Instead, the grievances were filed to preserve production work—encompassed by the stipulated work in dispute—at venues where the Employer was contractually required to hire Decorators, or for discretionary work where Decorators-represented employees were already on site performing work for an exposition.

Stagehands further argues, in its brief to the Board, that there is a jurisdictional dispute because “to the extent that the Decorators have historically performed some of the work in dispute [we are now] seeking to acquire it.” As the beneficiary of the Employer’s change in long-established work assignments, it is unsurprising that Stagehands would want to retain the additional work. But Section 10(k) is not a vehicle for awarding work where the dispute is of an employer’s own making. See generally *Machinists District Lodge 160 (SSA Marine)*, 347 NLRB 549, 550 (2006) (and cited cases).

In sum, we find that the conduct does not give rise to a jurisdictional dispute within the meaning of Section 10(k) and Section 8(b)(4)(D) of the Act. The evidence fails to establish a traditional jurisdictional dispute between two rival groups of employees claiming the same work, with an innocent employer caught in the middle. Rather, we conclude that the Employer by its own actions—assigning to Stagehand-represented employees work historically performed by Decorators-represented employees—has created a work preservation dispute. *Safeway Stores*, supra. As such, this case is not appropriate for resolution under Section 10(k), and we quash the notice of hearing.

## ORDER

It is ordered that the notice of hearing issued in this case is quashed.

Dated, Washington, D.C. July 9, 2018

---

Mark Gaston Pearce, Member

---

Lauren McFerran, Member

---

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD